



22 AUG 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

Christopher J. Fildes  
Fildes & Outland, P.C.  
20916 Mack Avenue, Suite 2  
Grosse Point Woods, MI 48236

In re Application of : DECISION ON RENEWED  
DETROIT STEEL PRODUCTS CO., INC. :  
U.S. Application No.: 10/049,157 : PETITION UNDER  
PCT No.: PCT/US01/14771 :  
Int. Filing Date: 03 May 2001 : 37 CFR 1.137(a) AND  
Priority Date: 04 May 2000 :  
For: VEHICLE SUSPENSION SYSTEMS : 37 CFR 1.137(b)

This decision is in response to applicant's "Request For Reconsideration of Dismissal Without Prejudice of Petition For Revival of an Application Abandoned Unavoidably or in The Alternative Petition For Revival of an Application Abandoned Unintentionally" filed 10 July 2002 in the United States Patent and Trademark Office (USPTO). Applicant has paid the required petition fee.

### BACKGROUND

On 14 June 2002, applicant was mailed a decision dismissing without prejudice applicant's petition under 37 CFR 1.137(a) to revive the present application. Applicant was afforded two months to file any request for reconsideration and advised to consider filing a petition to revive under 37 CFR 1.137(b) for unintentional, rather than unavoidable, delay.

On 10 July 2002, applicant filed the present renewed petition under 37 CFR 1.137(a) and in the alternative, petition under 37 CFR 1.137(b).

### DISCUSSION

#### **I. Renewed Petition Under 37 CFR 1.137(a)**

As detailed in the decision mailed 14 June 2002, under 37 CFR 1.137(a) a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment, and such petition must be accompanied by: (1) A proper response, unless already filed; (2) The petition fee as set forth in §1.17(l); (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) A terminal disclaimer (if necessary). Applicant previously satisfied items (1) and (2) above; item (4) is not applicable.

Concerning item (3), applicant has not met the burden of proof to show that the abandonment was unavoidable. Applicant argues that, "it was unforeseeable that the alleged anthrax threat in the Washington, D.C. area would affect Patent Office operations." To the contrary, prior to applicant's purported mailing of the Chapter II Demand on 05 November 2001, the anthrax situation was hardly an "alleged" threat but indeed a postal emergency affecting numerous federal facilities in the Washington, D.C. metropolitan area. Problems with delays in the U.S. mail service to the USPTO in the months of October and November 2001 were well known and were posted at the USPS website. See, e.g., notice entitled, "Patent Costumers Advised to Fax Communications to USPTO" posted 02 November 2001.

Moreover, as provided in MPEP 711.03(c), citing to Krahn v. Commissioner, 15 USPQ2d 1823 (E.D. Va 1990) [A] reasonably prudent person "would file papers or fees in compliance with 37 CFR 1.8 or 1.10 to ensure their timely filing in the USPTO, as well as preserve adequate evidence of such filing, a delay caused by an applicant's failure to file papers or fees in compliance with 37 CFR 1.8 and 1.10 does not constitute "unavoidable" delay." The processes set out in 37 CFR 1.10 are designed to protect applicants from exactly the situation which has arisen in this case and would have been utilized by a "prudent and careful man" in conducting "his most important business." See Krahn, further.

Applicant's contention that the Demand, "did reach the USPTO on time, but instead of being opened, was shipped under the possession of the USPTO or its agents to another location for an anthrax treatment that took two months to complete" is unfounded and not supported by any evidence of record.

For the reasons detailed above, applicant's petition under 37 CFR 1.137(a) is **DISMISSED**.

## **II. Petition Under 37 CFR 1.137(b)**

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (1), the proper response was the payment of the basic national fee. Applicant has previously provided this payment.

As to Item (2), applicant has provided the \$1280.00 petition fee along with the present petition.

With regard to Item (3), applicant's statement that, "the entire delay in filing the required

reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

### CONCLUSION

The petition to revive under 37 CFR 1.137(a) is **DISMISSED**.

The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

This application will be given an international application filing date of 03 May 2001 and a date of **01 February 2002** under 35 U.S.C. 371.

This application is being returned to the DO/EO/US for processing in accordance with this decision.



Boris Milef  
Legal Examiner  
PCT Legal Office



Derek A. Putonen  
Petitions Attorney  
PCT Legal Office  
Tel: (703) 305-0130  
Fax: (703) 308-6459